



April 10, 2009

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## ENGROSSED SENATE BILL No. 492

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DIGEST OF SB 492 (Updated April 8, 2009 4:34 pm - DI 101)

**Citations Affected:** IC 24-5; IC 24-5.5; IC 24-9; IC 25-1; IC 25-34.1; IC 27-7; IC 32-29; IC 32-30.

**Synopsis:** Consumer practices and residential mortgage foreclosures. Provides that a person may not issue a gift card that is subject to an expiration date or a fee. Requires a foreclosure consultant to retain all records and documents related to services performed on behalf of a homeowner for at least three years after the termination or conclusion of the foreclosure consultant contract. Prohibits a person from engaging in, or soliciting to engage in, a real estate or mortgage transaction without a permit or license required by law. Prohibits a person from making certain representations with respect to: (1) a mortgage or real estate transaction; or (2) the property that is the subject of the transaction; if the representation is not true and the person knows or reasonably should know that the representation is not true. Specifies that the board that regulates a licensed profession may not approve the surrender of a practitioner's license if the attorney general's office: (1) has filed an administrative complaint concerning the practitioner's license; and (2) opposes the surrender. Provides that a practitioner of a licensed profession who has been subjected to disciplinary sanctions by the board that regulates the profession may be required to pay the costs of any real estate review appraisal obtained in connection with the

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**Effective:** July 1, 2009; January 1, 2010.

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**Tallian, Bray, Randolph, Lanane**

(HOUSE SPONSORS — BARDON, KOCH, BURTON, DAY)

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January 15, 2009, read first time and referred to Committee on Judiciary.  
February 12, 2009, amended, reported favorably — Do Pass.  
February 19, 2009, read second time, amended, ordered engrossed.  
February 20, 2009, engrossed.  
February 23, 2009, read third time, passed. Yeas 46, nays 3.

HOUSE ACTION

March 3, 2009, read first time and referred to Committee on Financial Institutions.  
April 9, 2009, amended, reported — Do Pass.

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disciplinary proceedings. Provides that a violation of the statutes concerning: (1) credit service organizations; and (2) mortgage rescue protection fraud; by a person licensed or required to be licensed as a real estate salesperson or broker is a violation of the statute governing the regulation of real estate salespersons and brokers and is subject to certain specified enforcement procedures and sanctions. Provides that the electronic system to be established by the department of insurance not later than September 1, 2009, for the collection and storage of certain information concerning persons participating in or assisting with single family residential mortgage transactions must include the names of the buyer and the seller in a first lien purchase money mortgage transaction. Provides that in a foreclosure action that is filed after June 30, 2009, with respect to a first lien residential mortgage transaction, the creditor shall, not later than 30 days before the creditor files the action, send to the debtor a presuit notice, on a form prescribed by the housing and community development authority (authority), that: (1) informs the debtor that the debtor is in default; (2) informs the debtor that the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; and (3) provides contact information for the Indiana Foreclosure Prevention Network. Provides that in prescribing the form for the presuit notice, the authority must include the statement concerning mortgage foreclosure consultants that mortgagees are required to provide under existing law upon filing a foreclosure action. Provides that if the creditor proceeds to file an action to foreclose the mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor that the debtor: (1) has a right to participate in a settlement conference; and (2) may schedule a settlement conference by notifying the court, not later than 30 days after the notice is served, of the debtor's intent to participate in a settlement conference. Specifies certain circumstances under which a creditor is not required to provide: (1) the presuit notice; and (2) the notice of the debtor's right to a settlement conference. Provides that after June 30, 2009, a court may not issue a judgment of foreclosure with respect to a first lien residential mortgage transaction unless the following apply: (1) The creditor has given the required notice to the debtor of the availability of a settlement conference. (2) The debtor either: (A) does not contact the court within 30 days to schedule a settlement conference; or (B) contacts the court within the required 30 day period to schedule a settlement conference and, upon conclusion of the settlement conference, the parties are unable agree to a foreclosure prevention agreement. (3) At least 60 days have elapsed since the date the presuit notice was sent, unless the mortgaged property is abandoned. Provides that if the debtor contacts the court to schedule a settlement conference, the court shall issue a notice of a settlement conference to the parties. Provides that the court's notice of a settlement conference must do the following: (1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice. (2) Require the debtor to contact a mortgage foreclosure counselor before the settlement conference. (3) Require the debtor to bring to the settlement conference certain documents needed to engage in good faith negotiations. (4) Require the creditor to bring to the settlement conference a transaction history for the mortgage. (5) Inform the parties that each has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor. (6) Inform the parties that the settlement conference will be conducted at the county courthouse, or at another place designated by the court, on the date and at the time specified by the court, unless the parties stipulate otherwise. Requires the creditor to ensure that any person representing the creditor: (1) at a settlement conference; or (2) in any other negotiations with the debtor designed to reach agreement on a foreclosure prevention agreement; has authority to represent the creditor. Provides that if, as a result of a settlement conference, the

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debtor and the creditor agree to enter into a foreclosure prevention agreement, the agreement shall be reduced to writing and signed by both parties. Provides that at the election of the creditor, the foreclosure shall be dismissed or stayed for as long as the debtor complies with the terms of the foreclosure prevention agreement. After a settlement conference has occurred, requires the creditor to notify the court as to whether a foreclosure prevention agreement has been reached. Provides that participation in a settlement conference satisfies any mediation or alternative dispute resolution requirement established by court rule. Provides that immediately after a foreclosure sale, the sheriff that conducted the sale shall: (1) execute and deliver to the purchaser; and (2) record with the recorder of the county in which the premises are located; a deed of conveyance for the premises.

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April 10, 2009

First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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## ENGROSSED SENATE BILL No. 492

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation, property, and courts and court officers.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-5-26 IS ADDED TO THE INDIANA CODE AS  
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]:  
4 **Chapter 26. Gift Cards**  
5 **Sec. 1. (a) As used in this chapter, "gift card" means a record**  
6 **evidencing a promise, made for consideration by the seller or**  
7 **issuer of the record, that goods or services will be provided to the**  
8 **holder of the record for the value shown in the record.**  
9 **(b) The term includes the following:**  
10 **(1) A gift certificate.**  
11 **(2) A stored value card or certificate.**  
12 **(3) An online gift account.**  
13 **(c) The term does not include a prepaid calling card used to**  
14 **make telephone calls.**  
15 **Sec. 2. As used in this chapter, "person" means an individual, a**

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corporation, the state or its subdivisions or agencies, a business trust, an estate, a trust, a partnership, an association, a cooperative, or any other legal entity.

**Sec. 3. (a) Except as provided in this section, this chapter applies to gift cards that are issued after June 30, 2009.**

**(b) Section 4 of this chapter does not apply to the following:**

**(1) A gift card issued without consideration by a person under an awards, loyalty, or promotional program.**

**(2) A gift card issued by either of the following:**

**(A) A financial institution (as defined in IC 22-2-4-1).**

**(B) A person licensed by the department of financial institutions under IC 28-8-4.**

**(3) A gift card issued for less than face value to:**

**(A) an employer;**

**(B) a charitable organization exempt from federal taxation under Section 501 of the Internal Revenue Code; or**

**(C) a nonprofit organization.**

**(4) A gift card that is sold by:**

**(A) a charitable organization exempt from federal taxation under Section 501 of the Internal Revenue Code; or**

**(B) a nonprofit organization.**

**(5) A gift card that an employer issues to an employee in recognition of services performed by the employee.**

**Sec. 4. (a) A person may not issue a gift card that is subject to:**

**(1) an expiration date; or**

**(2) a fee, including a service fee, maintenance fee, dormancy charge, or inactivity charge.**

**(b) A gift card may be subject to an initial fee at the time the gift card is issued.**

**Sec. 5. A provision in an agreement creating a gift card that conflicts with this chapter is void.**

SECTION 2. IC 24-5.5-1-1, AS ADDED BY P.L.209-2007, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except for IC 24-5.5-3-1**, this article does not apply to the following:

**(1) A person organized or chartered under the laws of this state, any other state, or the United States that relate to a bank, a trust company, a savings association, a savings bank, a credit union, or an industrial loan and investment company.**

**(2) The Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or a Federal Home Loan Bank.**

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- 1 (3) A department or agency of the United States or of Indiana.  
 2 (4) A person that is servicing or enforcing a loan that it owns.  
 3 (5) A person that is servicing a loan:  
 4 (A) for a person described in subdivisions (1) through (4); ~~of~~  
 5 ~~this section~~; or  
 6 (B) insured by the Department of Housing and Urban  
 7 Development or guaranteed by the Veterans Administration.  
 8 (6) An attorney licensed to practice law in Indiana who is  
 9 representing a mortgagor.

10 SECTION 3. IC 24-5.5-3-1, AS ADDED BY P.L.209-2007,  
 11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2009]: Sec. 1. In addition to any other notice required by law,  
 13 a mortgagee, or the mortgagee's assignee, that proceeds under  
 14 IC 32-30-10 to foreclose a mortgage or deed of trust shall, ~~at the time~~  
 15 **of not later than thirty (30) days before** filing the complaint in the  
 16 action, provide the following written notice, **on a form prescribed by**  
 17 **the Indiana housing and community development authority under**  
 18 **IC 32-30-10.5-9(a)**, to the mortgagor in a statement printed in at least  
 19 14 point boldface type:

20 "NOTICE REQUIRED BY STATE LAW

21 Mortgage foreclosure is a complex process. People may  
 22 approach you about "saving" your home. You should be  
 23 careful about any such promises. There are government  
 24 agencies and nonprofit organizations you may contact for  
 25 helpful information about the foreclosure process. For the  
 26 name and telephone number of an organization near you,  
 27 please call the Indiana housing and community development  
 28 authority."

29 Service of the written notice required by this chapter shall be made as  
 30 provided in the Indiana Rules of Trial Procedure governing service of  
 31 process upon a person.

32 SECTION 4. IC 24-5.5-5-7.2 IS ADDED TO THE INDIANA  
 33 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 34 [EFFECTIVE JULY 1, 2009]: **Sec. 7.2. A foreclosure consultant shall**  
 35 **retain all records and documents, including the foreclosure**  
 36 **consultant contract, related to services performed on behalf of a**  
 37 **homeowner for at least three (3) years after the termination or**  
 38 **conclusion of the foreclosure consultant contract entered into by**  
 39 **the foreclosure consultant and the homeowner.**

40 SECTION 5. IC 24-9-1-1, AS AMENDED BY P.L.181-2006,  
 41 SECTION 58, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 2009]: Sec. 1. Except for ~~IC 24-9-3-7(3)~~ **IC 24-9-3-7(c)(3)**

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and IC 24-9-3-7(c)(4), this article does not apply to:

(1) a loan made or acquired by a person organized or chartered under the laws of this state, any other state, or the United States relating to banks, trust companies, savings associations, savings banks, credit unions, or industrial loan and investment companies; or

(2) a loan:

(A) that can be purchased by the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the Federal Home Loan Bank;

(B) to be insured by the United States Department of Housing and Urban Development;

(C) to be guaranteed by the United States Department of Veterans Affairs;

(D) to be made or guaranteed by the United States Department of Agriculture Rural Housing Service;

(E) to be funded by the Indiana housing and community development authority; or

(F) with a principal amount that exceeds the conforming loan size limit for a single family dwelling as established by the Federal National Mortgage Association.

SECTION 6. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) As used in this section, "mortgage transaction" includes the following:

(1) A home loan subject to this article.

(2) A loan described in IC 24-9-1-1 that is secured by a mortgage or deed of trust on real estate in Indiana on which there is located or will be located a structure or structures:

(A) designed primarily for occupancy of one (1) to four (4) families; and

(B) that is or will be occupied by a borrower as the borrower's principal dwelling.

(3) A first lien mortgage transaction (as defined in IC 24-4.4-1-301) subject to IC 24-4.4.

(4) A consumer credit sale subject to IC 24-4.5-2 in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(5) A consumer credit loan subject to IC 24-4.5-3 in which a mortgage, deed of trust, or land contract that constitutes a

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lien is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.

(6) A loan in which a mortgage, deed of trust, or land contract that constitutes a lien is created or retained against land:

(A) that is located in Indiana;

(B) upon which there is a dwelling that is not or will not be used by the borrower primarily for personal, family, or household purposes; and

(C) that is classified as residential for property tax purposes.

The term includes a loan that is secured by land in Indiana upon which there is a dwelling that is purchased by or through the borrower for investment or other business purposes.

(7) A reverse mortgage transaction that is secured by real estate in Indiana on which there is located a structure that is occupied by a borrower as the borrower's principal dwelling.

(b) As used in this section, "real estate transaction" means the sale or lease of any legal or equitable interest in real estate:

(1) that is located in Indiana;

(2) upon which there is a dwelling; and

(3) that is classified as residential for property tax purposes.

(c) A person may not:

(1) divide a loan transaction into separate parts with the intent of evading a provision of this article;

(2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; or

(3) engage in, a deceptive act in connection with a: (A) home loan; or (B) loan described in IC 24-9-1-1, or solicit to engage in, a real estate transaction or a mortgage transaction without a permit or license required by law; or

(4) with respect to a real estate transaction or a mortgage transaction, represent that:

(A) the transaction has:

(i) certain characteristics, terms, or benefits; or

(ii) the sponsorship or approval of a particular person or entity;

that it does not have and that the person knows or reasonably should know it does not have; or

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**(B) the real estate or property that is the subject of the transaction has any improvements, appurtenances, uses, characteristics, or associated benefits that it does not have and that the person knows or reasonably should know it does not have.**

SECTION 7. IC 25-1-11-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. **(a) Except as provided in subsection (b),** a practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license.

**(b) The board may not approve the surrender of a practitioner's license under subsection (a) if the office of the attorney general:**

- (1) has filed an administrative complaint concerning the practitioner's license; and**
- (2) opposes the surrender of the practitioner's license.**

SECTION 8. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

**(11) Real estate review appraisals, if applicable.**

SECTION 9. IC 25-34.1-6-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2.5. **(a) A violation of:**

- (1) IC 24-5-15; or**

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**(2) IC 24-5.5;**  
**by a person licensed or required to be licensed under this article is**  
**a violation of this article.**

**(b) A person who commits a violation described in subsection (a)**  
**commits a Class A infraction and is subject to:**

**(1) the enforcement procedures described in section 2 of this**  
**chapter; and**

**(2) any sanction that may be imposed by the commission**  
**under IC 25-1-11-12 for an act described in IC 25-1-11-11.**

SECTION 10. IC 27-7-3-15.5, AS ADDED BY P.L.145-2008,  
 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 JANUARY 1, 2010]: Sec. 15.5. (a) This section applies to a transaction  
 that:

(1) is a single family residential:

(A) first lien purchase money mortgage transaction; or

(B) refinancing transaction; and

(2) is closed after December 31, 2009.

(b) Not later than September 1, 2009, the department shall establish  
 and maintain an electronic system for the collection and storage of the  
 following information concerning any of the following persons that  
 have participated in or assisted with a transaction to which this section  
 applies, or that will participate in or assist with a transaction to which  
 this section applies:

(1) The name and license number (under IC 23-2-5) of each loan  
 brokerage business involved in the transaction.

(2) The name and registration number (under IC 23-2-5) of each  
 originator involved in the transaction.

(3) The name and license number (under IC 25-34.1) of each:

(A) principal broker; and

(B) salesperson or broker-salesperson, if any;

involved in the transaction.

(4) The:

(A) name of; and

(B) code assigned by the National Association of Insurance  
 Commissioners (NAIC) to;

each title insurance underwriter involved in the transaction.

(5) The name and license number (under IC 27-1-15.6) of each  
 title insurance agency and agent involved in the transaction as a  
 closing agent (as defined in IC 6-1.1-12-43(a)(2)).

(6) The name and:

(A) license or certificate number (under IC 25-34.1-3-8) of  
 each licensed or certified real estate appraiser; or

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(B) license number (under IC 25-34.1) of each broker;  
who appraises the property that is the subject of the transaction.

(7) The name of the mortgagee and, if the mortgagee is required  
to be licensed under:

(A) IC 24-4.4; or

(B) IC 24-4.5-3-502;

the license number of the mortgagee.

**(8) In the case of a first lien purchase money mortgage  
transaction, the name of the seller of the property that is the  
subject of the transaction.**

**(9) In the case of a first lien purchase money mortgage  
transaction, the name of the buyer of the property that is the  
subject of the transaction.**

**(10) The:**

**(A) name; and**

**(B) license number, certificate number, registration  
number, or other code, as appropriate;  
of any other person that participates in or assists with a  
transaction to which this section applies, as the department  
may prescribe.**

(c) The system established by the department under this section  
must include a form that:

(1) is uniformly accessible in an electronic format to the closing  
agent (as defined in IC 6-1.1-12-43(a)(2)) in the transaction; and

(2) allows the closing agent to do the following:

(A) Input information identifying the property that is the  
subject of the transaction by lot or parcel number, street  
address, or some other means of identification that the  
department determines:

(i) is sufficient to identify the property; and

(ii) is determinable by the closing agent.

(B) Subject to subsection (d) and to the extent determinable,  
input the information described in subsection (b) with respect  
to each person described in subsection (b) that participates in  
or assists with the transaction.

(C) Respond to the following questions:

(i) "On what date did you receive the closing instructions  
from the creditor in the transaction?".

(ii) "On what date did the transaction close?".

(D) Submit the form electronically to a data base maintained  
by the department.

(d) Not later than the time of the closing, each person described in

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subsection (b), **other than a person described in subsection (b)(8) or (b)(9)**, shall provide to the closing agent in the transaction the person's:

(1) legal name; and

(2) license number, certificate number, registration number, or NAIC code, as appropriate;

to allow the closing agent to comply with subsection (c)(2)(B). A person described in subsection (b)(7) shall provide the information required by this subsection for any person described in subsection (b)(6) that appraises the property that is the subject of the transaction on behalf of the person described in subsection (b)(7). A person described in subsection (b)(3)(B) who is involved in the transaction may provide the information required by this subsection for a person described in subsection (b)(3)(A) that serves as the principal broker for the person described in subsection (b)(3)(B). **In the case of a first lien purchase money mortgage transaction, the closing agent shall determine the information described in subsection (b)(8) and (b)(9) from the HUD-1 settlement statement.**

(e) **Except for a person described in subsection (b)(8) or (b)(9)**, a person described in subsection (b) who fails to comply with subsection (d) is subject to a civil penalty of one hundred dollars (\$100) for each closing with respect to which the person fails to comply with subsection (d). The penalty:

(1) may be enforced by the state agency that has administrative jurisdiction over the person in the same manner that the agency enforces the payment of fees or other penalties payable to the agency; and

(2) shall be paid into the home ownership education account established by IC 5-20-1-27.

(f) Subject to subsection (g), the department shall make the information stored in the data base described in subsection (c)(2)(D) accessible to:

(1) each entity described in IC 4-6-12-4; and

(2) the homeowner protection unit established under IC 4-6-12-2.

(g) The department, a closing agent who submits a form under subsection (c), each entity described in IC 4-6-12-4, and the homeowner protection unit established under IC 4-6-12-2 shall exercise all necessary caution to avoid disclosure of any information:

(1) concerning a person described in subsection (b), including the person's license, registration, or certificate number; and

(2) contained in the data base described in subsection (c)(2)(D); except to the extent required or authorized by state or federal law.

(h) The department may adopt rules under IC 4-22-2 to implement

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1 this section. Rules adopted by the department under this subsection  
2 may establish procedures for the department to:

- 3 (1) establish;
- 4 (2) collect; and
- 5 (3) change as necessary;

6 an administrative fee to cover the department's expenses in establishing  
7 and maintaining the electronic system required by this section.

8 (i) If the department adopts a rule under IC 4-22-2 to establish an  
9 administrative fee to cover the department's expenses in establishing  
10 and maintaining the electronic system required by this section, as  
11 allowed under subsection (h), the department may:

- 12 (1) require the fee to be paid:
  - 13 (A) to the closing agent responsible for inputting the
  - 14 information and submitting the form described in subsection
  - 15 (c)(2); and
  - 16 (B) by the borrower in the transaction;
- 17 (2) allow the closing agent described in subdivision (1)(A) to
- 18 retain a part of the fee collected to cover the closing agent's costs
- 19 in inputting the information and submitting the form described in
- 20 subsection (c)(2); and
- 21 (3) require the closing agent to pay the remainder of the fee
- 22 collected to the department for deposit in the title insurance
- 23 enforcement fund established by IC 27-7-3.6-1, for the
- 24 department's use in establishing and maintaining the electronic
- 25 system required by this section.

26 SECTION 11. IC 32-29-7-10 IS AMENDED TO READ AS  
27 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. Immediately after  
28 a foreclosure sale under this chapter, the sheriff shall:

- 29 (1) execute and deliver to the purchaser; **and**
- 30 (2) **record with the recorder of the county in which the**
- 31 **premises are located;**

32 a deed of conveyance for the premises, which must be valid to convey  
33 all the right, title, and interest held or claimed by all of the parties to  
34 the action and all persons claiming under them. The sheriff shall file a  
35 return with the clerk of the court.

36 SECTION 12. IC 32-30-10-3 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) **Subject to**  
38 **IC 32-30-10.5 with respect to mortgage transactions described in**  
39 **IC 32-30-10.5-5**, if a mortgagor defaults in the performance of any  
40 condition contained in a mortgage, the mortgagee or the mortgagee's  
41 assigns may proceed in the circuit court of the county where the real  
42 estate is located to foreclose the equity of redemption contained in the

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1 mortgage.

2 (b) If the real estate is located in more than one (1) county, the  
3 circuit court of any county in which the real estate is located has  
4 jurisdiction for an action for the foreclosure of the equity of redemption  
5 contained in the mortgage.

6 SECTION 13. IC 32-30-10-10 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. A plaintiff may not:

8 (1) proceed to foreclose the mortgagee's mortgage:

9 (A) while the plaintiff is prosecuting any other action for the  
10 same debt or matter that is secured by the mortgage; or

11 (B) while the plaintiff is seeking to obtain execution of any  
12 judgment in any other action; or

13 (C) **until the notice under IC 32-30-10.5-9(a) has been sent,**  
14 **if required, in the case of a mortgage transaction described**  
15 **in IC 32-30-10.5-5; or**

16 (2) prosecute any other action for the same matter while the  
17 plaintiff is foreclosing the mortgagee's mortgage or prosecuting  
18 a judgment of foreclosure.

19 SECTION 14. IC 32-30-10.5 IS ADDED TO THE INDIANA  
20 CODE AS A NEW CHAPTER TO READ AS FOLLOWS  
21 [EFFECTIVE JULY 1, 2009]:

22 **Chapter 10.5. Foreclosure Prevention Agreements for**  
23 **Residential Mortgages**

24 **Sec. 1. (a) The general assembly makes the following findings:**

25 (1) **Indiana faces a serious threat to its state economy and to**  
26 **the economies of its political subdivisions because of Indiana's**  
27 **high rate of residential mortgage foreclosures, which**  
28 **constitutes an emergency.**

29 (2) **Indiana's high rate of residential mortgage foreclosures**  
30 **has adversely affected property values in Indiana, and may**  
31 **have an even greater adverse effect on property values if the**  
32 **foreclosure rate continues to rise.**

33 (3) **It is in the public interest for the state to modify the**  
34 **foreclosure process to encourage mortgage modification**  
35 **alternatives.**

36 (b) **The purpose of this chapter is to avoid unnecessary**  
37 **foreclosures of residential properties and thereby provide stability**  
38 **to Indiana's statewide and local economies by:**

39 (1) **requiring early contact and communications among**  
40 **creditors, their authorized agents, and debtors in order to**  
41 **engage in negotiations that could avoid foreclosure; and**

42 (2) **facilitating the modification of residential mortgages in**

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appropriate circumstances.

**Sec. 2. (a) As used in this chapter, "creditor" means a person:**

**(1) that regularly engages in the extension of mortgages that are subject to a credit service charge or loan finance charge, as applicable, or are payable by written agreement in more than four (4) installments (not including a down payment); and**

**(2) to which the obligation is initially payable, either on the face of the note or contract, or by agreement if there is not a note or contract.**

**(b) The term includes a mortgage servicer.**

**(c) The term does not include a person that closes mortgages that:**

**(1) are made in the person's own name with funds provided by one (1) or more other persons; and**

**(2) are assigned simultaneously to the persons providing the funding not later than one (1) business day after the funding of the transaction.**

**Sec. 3. As used in this chapter, "debtor" refers to a person obligated to repay a mortgage.**

**Sec. 4. As used in this chapter, "foreclosure prevention agreement" means a written agreement that:**

**(1) is executed by both the creditor and the debtor; and**

**(2) offers the debtor an individualized plan that may include:**

**(A) a temporary forbearance with respect to the mortgage;**

**(B) a reduction of any arrearage owed by the debtor;**

**(C) a reduction of the interest rate that applies to the mortgage;**

**(D) a repayment plan;**

**(E) a deed in lieu of foreclosure;**

**(F) reinstatement of the mortgage upon the debtor's payment of any arrearage;**

**(G) a sale of the property; or**

**(H) any loss mitigation arrangement or debtor relief plan established by federal law.**

**Sec. 5. As used in this chapter, "mortgage" means a loan in which a first mortgage, or a land contract that constitutes a first lien, is created or retained against land upon which there is a dwelling that is or will be used by the debtor primarily for personal, family, or household purposes.**

**Sec. 6. As used in this chapter, "mortgage foreclosure counselor" means a foreclosure prevention counselor who is part**

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of, or has been trained or certified by, the Indiana Foreclosure Prevention Network.

Sec. 7. As used in this chapter, "mortgage servicer" means the last person to whom:

(1) a debtor in a mortgage; or

(2) the debtor's successor in interest;

has been instructed to send payments on the mortgage.

Sec. 8. As used in this chapter, "reporting agency" means the Indiana housing and community development authority created by IC 5-20-1-3.

Sec. 9. (a) This section applies to a foreclosure action that is filed after June 30, 2009. Except as provided in subsection (e) and section 11(g) of this chapter, not later than thirty (30) days before a creditor files an action for foreclosure, the creditor shall send to the debtor by certified mail, return receipt requested, a presuit notice on a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. In prescribing the form required by this section, the Indiana housing and community development authority shall include in the notice the statement set forth in IC 24-5.5-3-1. In addition, the notice required by this subsection must:

(1) inform the debtor that:

(A) the debtor is in default; and

(B) the debtor is encouraged to obtain assistance from a mortgage foreclosure counselor; and

(2) provide the contact information for the Indiana Foreclosure Prevention Network.

(b) The notice required by subsection (a) shall be sent to:

(1) the address of the mortgaged property; or

(2) the last known mailing address of the debtor if the creditor's records indicate that the mailing address of the debtor is other than the address of the mortgaged property.

(c) Except as provided in subsection (e) and section 11(h) of this chapter, if a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice that informs the debtor of the debtor's right to participate in a settlement conference. The notice must be in a form prescribed by the Indiana housing and community development authority created by IC 5-20-1-3. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court, not later than thirty (30) days after the notice is served, of the debtor's intent to participate in a settlement conference.

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(d) In a foreclosure action filed under IC 32-30-10-3 after June 30, 2009, the creditor shall attach to the complaint filed with the court a copy of the notices sent to the debtor under subsections (a) and (c).

(e) A creditor is not required to send the notices described in this section if:

(1) the loan is secured by a dwelling that is not the debtor's primary residence;

(2) the loan has been the subject of a prior foreclosure prevention agreement under this chapter and the debtor has defaulted with respect to the terms of that foreclosure prevention agreement;

(3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or

(4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor, other than a foreclosure prevention agreement under this chapter.

Sec. 10. After June 30, 2009, a court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter unless all of the following apply:

(1) The creditor has given the notice required under section 9(c) of this chapter.

(2) The debtor either:

(A) does not contact the court within the thirty (30) day period described in section 9(c) of this chapter to schedule a settlement conference under section 9(c) of this chapter; or

(B) contacts the court within the thirty (30) day period described in section 9(c) of this chapter to schedule a conference under section 9(c) of this chapter and, upon conclusion of the conference, the parties are unable to reach agreement on the terms of a foreclosure prevention agreement.

(3) At least sixty (60) days have elapsed since the date the notice required by section 9(a) of this chapter was sent, unless the mortgaged property is abandoned.

Sec. 11. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference if the debtor contacts the court to schedule a settlement conference as described in section 9(c) of this chapter. The court's

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notice of a settlement conference must do the following:

(1) Order the creditor and the debtor to conduct a settlement conference on or before a date and time specified in the notice, which date must not be earlier than twenty-five (25) days after the date of the notice or later than sixty (60) days after the date of the notice, for the purpose of attempting to negotiate a foreclosure prevention agreement.

(2) Require the debtor to contact a mortgage foreclosure counselor before the date of the settlement conference. The notice must provide the contact information for the Indiana Foreclosure Prevention Network.

(3) Require the debtor to bring to the settlement conference the following documents needed to engage in good faith negotiations with the creditor:

(A) Documentation of the debtor's present and future income, expenses, assets, and liabilities, including documentation of the debtor's employment history.

(B) Any other documentation or information that the court determines is needed for the debtor to engage in good faith negotiations with the creditor. The court shall identify any documents required under this clause with enough specificity to allow the debtor to obtain the documents before the scheduled settlement conference.

(4) Require the creditor to bring to the settlement conference a transaction history for the mortgage, including the following:

(A) A copy of the original note and mortgage.

(B) A record of payments made by the borrower.

(C) An itemization of all amounts claimed by the lender as being owed on mortgage.

(D) Any other documentation that the court determines is needed.

(5) Inform the parties that:

(A) each party has the right to be represented by an attorney or assisted by a mortgage foreclosure counselor at the settlement conference; and

(B) an attorney or a mortgage foreclosure counselor may participate in the settlement conference in person or by telephone.

(6) Inform the parties that the settlement conference will be conducted at the county courthouse, or at another place designated by the court, on the date and time specified in the

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notice under subdivision (1) unless the parties submit to the court a stipulation to:

(A) modify the date, time, and place of the settlement conference; or

(B) hold the settlement conference by telephone at a date and time agreed to by the parties.

(b) An attorney for the creditor shall attend the settlement conference, and an authorized representative of the creditor shall be available by telephone during the settlement conference. In addition, the court may require any person that is a party to the foreclosure action to appear at or participate in a settlement conference held under this section, and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered.

(c) At the court's discretion, a settlement conference may or may not be attended by a judicial officer.

(d) The creditor shall ensure that any person representing the creditor:

(1) at a settlement conference scheduled under subsection (a); or

(2) in any negotiations with the debtor designed to reach agreement on the terms of a foreclosure prevention agreement;

has authority to represent the creditor in negotiating a foreclosure prevention agreement with the debtor.

(e) If, as a result of a settlement conference held under this section, the debtor and the creditor agree to enter into a foreclosure prevention agreement, the agreement shall be reduced to writing and signed by both parties, and each party shall retain a copy of the signed agreement. Not later than seven (7) business days after the signing of the foreclosure prevention agreement, the creditor shall file with the court a copy of the signed agreement. At the election of the creditor, the foreclosure shall be dismissed or stayed for as long as the debtor complies with the terms of the foreclosure prevention agreement.

(f) If, as a result of a settlement conference held under this section, the debtor and the creditor are unable to agree on the terms of a foreclosure prevention agreement, the creditor shall, not later than seven (7) business days after the date of the settlement conference, file with the court a notice indicating that:

(1) the settlement conference held under this section has concluded and a foreclosure prevention agreement was not

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reached; or

(2) the settlement conference under this section was held but negotiations between the debtor and the creditor are continuing.

If the settlement conference held under this section results in an outcome described in subdivision (1), the foreclosure action filed by the creditor may proceed as otherwise allowed by law.

(g) If:

(1) a foreclosure is dismissed by the creditor under subsection (f) after a foreclosure prevention agreement is reached; and  
(2) a default in the terms of the foreclosure prevention agreement later occurs;

the creditor or its assigns may bring a foreclosure action under IC 32-30-10-3 without sending the notices described in section 9 of this chapter.

(h) Participation in a settlement conference under this section satisfies any mediation or alternative dispute resolution requirement established by court rule.

**Sec. 12. (a)** This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.

(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action shall serve notice of the availability of a settlement conference under section 9(c) of this chapter.

SECTION 15. IC 32-30-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided in IC 32-30-10.5 for mortgage transactions described in IC 32-30-10.5-5,** it is not necessary in any action upon a mortgage or lien to give time for:

(1) the payment of money; or

(2) performing any other act.

Final judgment may be given in the first instance.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 492, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 3, delete "IC 24-5.5-3-1," and insert "**IC 24-5.5-3,**".

Page 2, between lines 26 and 27, begin a new paragraph and insert:

"SECTION 3. IC 24-5.5-5-7 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 7. A foreclosure consultant shall retain all records and documents related to services performed on behalf of a homeowner for at least three (3) years after the termination or conclusion of a contract with the homeowner.**

SECTION 4. IC 24-9-2-12.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 12.5. "Real estate transaction" has the meaning set forth in IC 25-34.1-10-8.**

SECTION 5. IC 24-9-3-7, AS AMENDED BY P.L.141-2005, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. A person may not:

- (1) divide a loan transaction into separate parts with the intent of evading a provision of this article;
- (2) structure a home loan transaction as an open-end loan with the intent of evading the provisions of this article if the loan would be a high cost home loan if the home loan had been structured as a closed-end loan; ~~or~~
- ~~(3) engage in a deceptive act in connection with a:~~
  - ~~(A) home loan; or~~
  - ~~(B) loan described in IC 24-9-1-1.~~
- (3) engage or solicit to engage in a real estate transaction or a consumer credit mortgage transaction without a permit or license required by law; or**
- (4) represent that a real estate transaction or a consumer credit mortgage transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits that:**
  - (A) the real estate transaction or consumer credit mortgage does not have; and**
  - (B) the person knows or reasonably should know the real estate transaction or consumer credit mortgage does not have.**

SECTION 6. IC 25-1-11-17 IS AMENDED TO READ AS

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FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 17. A practitioner may petition the board to accept the surrender of the practitioner's license instead of having a hearing before the board. The practitioner may not surrender the practitioner's license without the written approval of the board, and the board may impose any conditions appropriate to the surrender or reinstatement of a surrendered license. **The board may not accept the surrender of a practitioner's license if the office of attorney general:**

**(1) has filed an administrative complaint concerning the practitioner's license; and**

**(2) opposes the surrender of the license.**

SECTION 7. IC 25-1-11-18, AS AMENDED BY P.L.194-2005, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. A practitioner who has been subjected to disciplinary sanctions may be required by a board to pay the costs of the proceeding. The practitioner's ability to pay shall be considered when costs are assessed. If the practitioner fails to pay the costs, a suspension may not be imposed solely upon the practitioner's inability to pay the amount assessed. These costs are limited to costs for the following:

- (1) Court reporters.
- (2) Transcripts.
- (3) Certification of documents.
- (4) Photo duplication.
- (5) Witness attendance and mileage fees.
- (6) Postage.
- (7) Expert witnesses.
- (8) Depositions.
- (9) Notarizations.
- (10) Administrative law judges.

**(11) Real estate appraisals.**

SECTION 8. IC 25-34.1-6-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) A person who:

- (1) performs the acts of a salesperson without a salesperson license;
- (2) performs the acts of a broker without a broker license; or
- (3) conducts, or solicits or accepts enrollment of students for, a course as prescribed in IC 25-34.1-3 without course approval;

commits a Class A infraction. Upon conviction for an offense under this section, the court shall add to any fine imposed, the amount of any fee or other compensation earned in the commission of the offense. Each transaction constitutes a separate offense.

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(b) In all actions for the collection of a fee or other compensation for performing acts regulated by this article, it must be alleged and proved that, at the time the cause of action arose, the party seeking relief was not in violation of this section.

(c) The commission may issue a cease and desist order to prevent violations of this section.

(1) If the commission determines that a person is violating this section, or is believed to be violating this section, the commission may issue an order to that person setting forth the time and place for a hearing at which the affected person may appear and show cause as to why the challenged activities are not in violation of this section.

(2) After an opportunity for hearing, if the commission determines that the person is violating this section, the commission shall issue a cease and desist order which shall describe the person and activities which are the subject of the order.

(3) A cease and desist order issued under this section is enforceable in the circuit courts of this state.

(d) The attorney general, the commission, or the prosecuting attorney of any county in which a violation occurs may maintain an action in the name of the state to enjoin a person from violating this section.

(e) In charging any person in a complaint for an injunction or in affidavit, information, or indictment with the violation of the provisions of this section, it is sufficient, without averring any further or more particular facts, to charge that the person upon a certain day and in a certain county either acted as a real estate broker or salesperson not having a license or conducted, or solicited or accepted enrollment of students for, a broker or salesperson course without course approval.

**(f) A licensee who violates IC 24-5-15 or IC 24-5.5 may be disciplined under IC 25-1-11 and this section.**

**(f) (g)** Each enforcement procedure established in this section is supplemental to other enforcement procedures established in this section."

Page 5, line 22, delete "will" and insert "**may**".

Page 5, delete lines 25 through 39.

Page 5, line 40, delete "(7)" and insert "**(3)**".

Page 5, line 40, delete "necessary and".

Page 6, delete lines 2 through 14.

Page 6, line 34, delete ":".

Page 6, delete lines 35 through 39.

Page 6, line 40, delete "(B)".

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Page 6, run in lines 34 through 40.

Page 6, line 41, delete "(i)" begin a new line double block indented and insert:

"(A)".

Page 7, line 1, delete "(ii)" begin a new line double block indented and insert:

"(B)".

Page 7, line 2, delete "(iii)" begin a new line double block indented and insert:

"(C)".

Page 7, line 4, delete "(iv)" begin a new line double block indented and insert:

"(D)".

Page 7, line 5, delete "(v)" begin a new line double block indented and insert:

"(E)".

Page 7, line 6, delete "(vi)" begin a new line double block indented and insert:

"(F)".

Page 7, line 8, delete "(vii)" begin a new line double block indented and insert:

"(G)".

Page 7, delete lines 20 through 22.

Page 7, line 23, delete "Sec. 9." and insert "Sec. 8.".

Page 7, line 26, delete "written" and insert "presuit".

Page 7, line 26, delete "does the following:" and insert **"informs the debtor that the creditor intends to initiate a foreclosure and that the debtor may obtain assistance from a foreclosure counselor and that provides information on how to contact a housing counselor."**.

Page 7, delete lines 27 through 42.

Page 8, delete lines 1 through 30.

Page 8, delete lines 36 through 42, begin a new paragraph and insert:

**"(c) If a creditor files an action to foreclose a mortgage, the creditor shall include with the complaint served on the debtor a notice of right to participate in a settlement conference. The notice must inform the debtor that the debtor may schedule a settlement conference by notifying the court of the debtor's intent to participate in a settlement conference not later than thirty (30) days after the complaint is served."**

Page 9, delete lines 1 through 39.

Page 9, line 40, delete "Sec. 10." and insert "Sec. 9.".

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Page 9, line 40, delete "creditor may not proceed" and insert "**court may not issue a judgment of foreclosure under IC 32-30-10 on a mortgage subject to this chapter**".

Page 9, delete line 41.

Page 9, line 42, delete "by filing a complaint in a court having jurisdiction".

Page 10, line 3, delete "9(a)" and insert "**8(c)**".

Page 10, line 5, delete "creditor" and insert "**court**".

Page 10, line 6, delete "9(a)(4)" and insert "**(8)(c)**".

Page 10, line 7, after "a" insert "**settlement**".

Page 10, line 7, delete "offered by the debtor".

Page 10, line 8, delete "9(a)(2)" and insert "**(8)(c)**".

Page 10, line 9, delete "creditor" and insert "**court**".

Page 10, line 10, delete "9(a)(4)" and insert "**(8)(c)**".

Page 10, line 10, after "a" insert "**settlement**".

Page 10, line 11, delete "offered by the debtor".

Page 10, line 11, delete "9(a)(2)" and insert "**(8)(c)**".

Page 10, line 12, delete "such" and insert "**the**".

Page 10, delete lines 15 through 16.

Page 10, line 17, delete "subsection (a)," and insert "**IC 32-30-10-3,**".

Page 10, line 19, delete "9(a)" and insert "**(8)(a)**".

Page 10, line 21, delete "under subsection (a)".

Page 10, line 22, delete ":".

Page 10, line 23, delete "(1)".

Page 10, line 23, delete "in the" and insert "**if**".

Page 10, run in lines 22 through 23.

Page 10, line 24, delete "case of a complaint filed under".

Page 10, line 24, delete "(a)(2)(A); or" and insert "**(a)(2)(A) applies.**".

Page 10, delete lines 25 through 26.

Page 10, line 28, delete "(c)(1)" and insert "**(c)**".

Page 10, line 32, delete "9(a)" and insert "**8(c)**".

Page 10, line 42, delete "9(a)" and insert "**8(c)**".

Page 11, line 6, delete "such" and insert "**the**".

Page 11, delete lines 10 through 42.

Page 12, delete lines 1 through 6, begin a new paragraph, and insert:

**"Sec. 10. (a) Unless a settlement conference is not required under this chapter, the court shall issue a notice of a settlement conference. The court's notice of a settlement conference must do the following:"**.

Page 12, line 16, delete "and for any other mortgage" and insert ".".

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Page 12, delete lines 17 through 18.

Page 12, line 33, delete "The transaction".

Page 12, delete lines 34 through 42.

Page 13, delete lines 1 through 4.

Page 13, line 7, after "or" insert "**assisted by**".

Page 13, delete lines 29 through 42.

Page 14, delete lines 1 through 6.

Page 14, line 7, delete "(e)" and insert "**(b)**".

Page 14, line 10, delete "(f)" and insert "**(c)**".

Page 14, line 11, delete "(c)(6)" and insert "**(a)(6)**".

Page 14, line 13, delete "(g)" and insert "**(d)**".

Page 14, line 15, delete "(c);" and insert "**(a);**".

Page 14, delete lines 22 through 28.

Page 14, line 29, delete "(i)" and insert "**(e)**".

Page 14, line 35, delete "and the reporting agency, on a".

Page 14, line 36, delete "form prescribed by the reporting agency,".

Page 14, delete lines 38 through 42, begin a new paragraph and insert:

**"Sec. 11. (a) This section applies to a mortgage foreclosure action with respect to which the creditor has filed the complaint in the proceeding before July 1, 2009, and the court having jurisdiction over the proceeding has not rendered a judgment of foreclosure before July 1, 2009.**

**(b) In a mortgage foreclosure action to which this section applies, the court having jurisdiction of the action:**

**(1) shall serve notice of a settlement conference described in section 10 of this chapter on the parties to the action not later than August 1, 2009; and**

**(2) may not proceed to render a judgment of foreclosure in an action described in subsection (a) unless, upon the conclusion of a settlement conference described in this section, the parties are unable to agree on the terms of a foreclosure prevention agreement.**

SECTION 8. IC 32-30-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. **Except as provided in IC 32-30-10.5 for first lien mortgage transactions,** it is not necessary in any action upon a mortgage or lien to give time for:

(1) the payment of money; or

(2) performing any other act.

Final judgment may be given in the first instance."

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Delete page 15.  
 Renumber all SECTIONS consecutively.  
 and when so amended that said bill do pass.

(Reference is to SB 492 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 8, Nays 2.

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SENATE MOTION

Madam President: I move that Senate Bill 492 be amended to read as follows:

Page 5, delete lines 12 through 42.

Delete page 6.

Page 7, delete lines 12 through 24.

Page 7, line 29, reset in roman "or".

Page 7, line 31, strike "or".

Page 7, delete lines 32 through 34.

Page 7, line 37, delete "." and insert "; or

**(3) proceed to foreclose a mortgage (as defined in IC 32-30-10.5-5) until the notice under IC 32-30-10.5-8(a) has been sent, if required."**

Page 8, line 27, delete "a person" and insert "**the mortgagor in a first lien mortgage transaction (as defined in IC 24-4.4-1-301(6)).**".

Page 8, delete lines 28 through 29.

Page 8, line 41, delete "or".

Page 8, line 42, delete "." and insert "; or

**(H) any loss mitigation arrangement or debtor relief plan established by federal law."**

Page 9, line 12, after "2009," insert "**except as provided in subsection (d) and section 10(f) of this chapter, before a creditor files an action for foreclosure,**".

Page 9, line 12, delete "if a debtor defaults in the".

Page 9, line 13, delete "performance of any condition contained in the mortgage,".

Page 9, line 15, after "notice" insert "**in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3**".

Page 9, line 24, delete "If" and insert "**Except as provided in**

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**subsection (d) and section 10(f) of this chapter, if".**

Page 9, line 26, before "of" insert **"that informs the debtor"**.

Page 9, line 26, after "of" insert **"a"**.

Page 9, line 26, after "conference." insert **"The notice shall be served with the complaint and in a form prescribed by the Indiana housing and community development authority established by IC 5-20-1-3."**

Page 9, line 30, delete "complaint" and insert **"notice"**.

Page 9, between lines 30 and 31, begin a new paragraph and insert:  
**"(d) A creditor is not required to send the notices described in this section if:**

**(1) the loan is secured by a dwelling that is not the debtor's primary residence;**

**(2) the loan has been the subject of a prior foreclosure prevention plan;**

**(3) bankruptcy law prohibits the creditor from participating in a settlement conference under this chapter with respect to the loan; or**

**(4) the court finds that a settlement conference would be of limited value based on the result of a prior loss mitigation effort between the debtor and the creditor."**

Page 10, line 8, delete "Except as provided in subsection (d), in" and insert **"In"**.

Page 10, line 10, delete "complaint is" and insert **"notice required by section 8(a) of this chapter was sent unless the mortgaged property is vacant."**

Page 10, delete lines 11 through 36.

Page 10, line 39, delete "." and insert **"if the debtor contacts the court to schedule a settlement conference as described in section 8(c) of this chapter."**

Page 11, line 32, delete "at the county courthouse" and insert **"by telephone"**.

Page 11, line 34, delete "not later than twenty (20) days after the" and insert **"a stipulation to modify the date, time, and place of the settlement conference."**

Page 11, delete lines 35 through 42.

Page 12, delete lines 1 through 5.

Page 12, line 8, delete "." and insert **", and, for cause shown, the court may order the creditor and the debtor to reconvene a settlement conference at any time before judgment is entered."**

Page 12, line 9, delete "held at a".

Page 12, line 10, delete "county courthouse under subsection

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(a)(6)".

Page 12, line 19, delete "bind the creditor in negotiating a foreclosure" and insert "**conduct negotiations.**".

Page 12, delete line 20.

Page 12, line 28, after "reached." insert "**At the election of the creditor, the foreclosure shall be dismissed or stayed for as long as the debtor complies with the terms of the foreclosure prevention plan.**

(f) If a foreclosure is dismissed and a default in the terms of the foreclosure prevention plan later occurs, the creditor or its assigns may bring a foreclosure action without being required to send the notices described in section 8 of this chapter.

(g) Participation in a settlement conference under this section satisfies any mediation or alternative dispute resolution requirement established by court rule."

Page 12, line 35, delete ":".

Page 12, line 36, delete "(1)".

Page 12, line 36, after "of" insert "**the availability of**".

Page 12, line 36, delete "described in" and insert "**under section 8(c) of this chapter.**".

Page 12, run in lines 35 through 36.

Page 12, delete lines 37 through 42.

Page 13, delete line 1.

Re-number all SECTIONS consecutively.

(Reference is to SB 492 as printed February 13, 2009.)

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Financial Institutions, to which was referred Senate Bill 492, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation, property, and courts and court officers.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 492 as reprinted February 20, 2009.)

BARDON, Chair

Committee Vote: yeas 10, nays 0.

C  
o  
p  
y

